

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 5045 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

MAE TERRELL
S.S.A. No.

PRECEDENT
BENEFIT DECISION
No. P-B-320

FORMERLY BENEFIT DECISION No. 5045
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The above-named claimant on April 26, 1948, appealed from the decision of a Referee (S-6210) which disqualified her from benefits under Section 58(a)(4) of the Unemployment Insurance Act [now section 1257(b) of the Unemployment Insurance Code] on the ground that she had refused an offer of suitable employment without good cause and that she was not available for work as required by Section 57(c) of the Act [now section 1253(c) of the code].

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

The claimant was last employed as a bookkeeper and office manager for a Delano, California, employer from July of 1946 until October, 1947, at a wage of \$250 per month. The claimant worked a forty-hour week and received time and one-half for all work performed in excess of forty hours per week. She voluntarily left this employment on October 24, 1947, because of pregnancy. Prior to this the claimant was engaged in self-employment maintaining a bookkeeping service and at the same time she also worked for a Wasco, California, employer part time. She has had approximately twelve years' experience as a bookkeeper and office manager.

On March 16, 1948, the claimant registered for work as a bookkeeper and filed a claim for benefits in the Bakersfield office of the Department of Employment. On March 24, 1948, the Department issued a determination which disqualified the claimant from March 9, 1948, through April 12, 1948, on the ground that she had failed to accept an offer of suitable employment without good cause within the meaning of Section 58(a)(4) of the Unemployment Insurance Act [now section 1257(b) of the code]. The claimant appealed and a Referee affirmed the determination. The Referee also held that the claimant was ineligible to receive benefits from March 16, 1948, to April 15, 1948, on the ground that she was not available for work as required by Section 57(c) of the Act [now section 1253(c) of the code].

The claimant has resided at her present address in Wasco for approximately eleven years. In her most recent employment she traveled to and from work in Delano in her own automobile, a distance of approximately twenty miles one way. However, due to the present age of the automobile, she is of the opinion that she should not commute from her residence a distance of more than eight miles in order to obtain employment. The only communities within such an eight-mile radius are Shafter and Wasco, California. There is no evidence of the existence of a labor market for the claimant in Shafter.

On March 11, 1948, the claimant was referred to employment as a bookkeeper for a business establishment in Wasco. The prospective employment paid a wage of \$150 per month for a forty-four hour week. The claimant accepted the referral and was interviewed by the employer, but did not accept the position because she believed the wage was too low and that the employer has established the low wage as a discrimination against women workers. The claimant stated that because of the cost of obtaining care for her child she could not accept any employment which paid less than \$200 per month. A Department representative testified that \$150 per month was the prevailing wage for bookkeepers in the area of the claimant's residence.

Wasco, population approximately 5,000, is located in an agricultural area. In past years the claimant has furnished a bookkeeping service to farmers in the locality and also has obtained considerable part-time employment

from industrial concerns temporarily located in the area during seasonal operations. The claimant stated that she has contacted a number of business concerns in Wasco who employ either part-time or full-time bookkeepers and office managers. Specifically, the claimant mentioned two prospective employers who informed her that they paid wages ranging from \$200 to \$300 per month for qualified bookkeepers. When this case was heard by the Referee on April 15, 1948, the claimant was then seeking to reestablish her former part-time bookkeeping service.

REASON FOR DECISION

Section 13 of the Unemployment Insurance Act [now sections 1258-1259 of the code] defines suitable employment in part in the following language:

"(a) 'Suitable employment' means work in the individual's usual occupation or for which he is reasonably fitted, regardless of whether or not it is subject to this act.

"In determining whether the work is work for which the individual is reasonably fitted, the commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence. Any work offered under such conditions is suitable if it gives to the individual wages at least equal to his weekly benefit amount for total unemployment.

"In any particular case in which the commission finds it impracticable to apply one of the foregoing standards, the commission may apply any standard set by it which is reasonably calculated to determine what is suitable employment.

"(b) Notwithstanding any other provisions of this act, no work or employment shall be deemed suitable and benefits shall not be denied to any otherwise eligible and qualified individual for refusing new work under any of the following conditions:

"(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the

individual than those prevailing for similar work in the locality; . . ."

In this case a local office representative of the Department testified that the prevailing wage for qualified bookkeepers in the locality was \$150 per month. We have in prior cases accorded considerable weight to such testimony for representatives of the employment service, because of their specialized knowledge of employment conditions in a particular locality, are in a position to state with a reasonable degree of accuracy whether the hours, wages or other conditions of work are substantially less favorable to an individual than those prevailing for similar work in a locality. However, in this case, there is no evidence in the record to establish the basis upon which the employment service representative determined what constituted the prevailing rate of pay for full-time qualified bookkeepers in the locality.

The evidence does disclose that there are at least three employers in Wasco who employ individuals in such a capacity, and that these employers pay wages ranging from \$150 to \$300 per month. In our opinion, based on these figures, the prevailing wage for bookkeepers in Wasco must be set at a figure considerably in excess of \$150 per month, and in view of the claimant's prior earnings and experience, we consider that the claimant is qualified for employment which pays a wage in excess of the minimum scale for bookkeepers. Therefore, we conclude that the claimant refused an offer of unsuitable employment on March 11, 1948, and that benefits may not be denied on this ground.

The claimant has also protested that portion of the Referee's decision which held that she was not available for work as required by Section 57(c) of the Act [now section 1253(c) of the code]. In Benefit Decision No. 4587-6193, we defined availability for work as requiring that a claimant must be available for work which there is no good cause to refuse, and for which there is a potential labor market in the geographical area in which the claimant's services are offered. We further have held in many prior decisions that the test of availability may not be predicated upon the lack of openings for the claimant in any particular locality but must rather be based upon whether there is a potential employment field.

In the instant case the claimant has resided in her present locality for the past eleven years and has during this period been employed in both part-time and full-time capacity as a bookkeeper and office manager. While her most recent employment was in Delano, California, approximately twenty miles from her residence, we do not consider her present inability to accept work in that community due to a lack of adequate transportation as constituting a substantial restriction upon her availability for work for there is no evidence in the record to indicate that Delano offers any greater opportunities for employment for the claimant than Wasco. Admittedly, employment opportunities for bookkeepers in Wasco are limited; however, there is a potential labor market for the claimant and she has evidenced a desire to obtain such work by her applications for employment. We do not consider her wage restriction to be unreasonable in view of her prior training and experience, her prior earnings, and the fact that such restriction does not exceed what we consider to be the prevailing wage in the locality. We may not base a finding of unavailability in this case upon the claimant's having refused an offer of employment for we have found that the offered work was unsuitable and for such reason the claimant had good cause to refuse the offer. Therefore, we conclude that the claimant has met the availability requirements of Section 57(c) of the Unemployment Insurance Act [now section 1253(c) of the code] during the period involved in this appeal.

DECISION

The decision of the Referee is reversed. Benefits are allowed provided the claimant is otherwise eligible.

Sacramento, California, September 3, 1948.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

TOLAND C. McGETTIGAN, Chairman

MICHAEL B. KUNZ

GLENN V. WALLS

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5045 is hereby designated as Precedent Decision No. P-B-320.

Sacramento, California, May 11, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT